

### **REMARKS**

The Office Action dated May 22, 2009, has been received and carefully reviewed. The preceding amendments and the following remarks form a full and complete response thereto. New claims 11 and 12 restate and combine limitations of the original claims. No new matter is added by this amendment. Reconsideration of all pending claims is respectfully requested..

#### **Rejections under 35 U.S.C. § 103**

Claims 7-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable, by reason of obviousness, over published US Patent Application No. 2001/0033374 A1 to Hoyt ("Hoyt") in view of published US Patent Application No. 2005/0012033 A1 to Stern et al. ("Stern"). Applicants respectfully traverse this rejection and submit that claims 7-9 recite subject matter that would not have been obvious to a person having ordinary skill in the art in light of this combination of references.

For example, neither Hoyt nor Stern discloses or suggests a device for determining luminescent molecules by means of optical excitation in confocal measuring volumes as recited in claim 7. The May 2009 Office Action appears to argue that this feature is disclosed by FIG. 6 of Hoyt. Applicants respectfully disagree. Hoyt does not disclose or even suggest that the samples 50 are confocal. The May 2009 Office Action further appears to argue that this feature is disclosed by the mirror 41 of Hoyt. First, Hoyt does not disclose or even suggest that the mirror 41 is confocal with anything. Second, the mirror 41 is clearly not "measuring volumes" as recited in claim 7. Further, the May 2009 Office Action appears to suggest ignoring the explicit claim language related to "confocal measuring volumes" and only regard the claim limitations of "multiple confocal volume elements in the respective measuring volume," this feature would still not be reasonably interpreted to include the mirror 41. As discussed, Hoyt

does not disclose or even suggest that the mirror 41 is confocal with anything. Furthermore, one of ordinary skill in the art, in light of Applicants' specification, would consider a mirror or other optical elements as the recited "confocal volume elements." See Applicants' published application 2006/0226374 at paragraph [0051]. Still further, the mirror 41 is clearly not "in the respective measuring volume" as recited in claim 7. Neither mirror 41, nor any other aspect of Hoyt, discloses or suggests "confocal measuring volumes" or "multiple confocal volume elements in the respective measuring volume."

Furthermore, neither Hoyt nor Stern discloses or suggests the feature of claim 7 related to focusing optics for focusing penetrating multiple light beams into multiple confocal volume elements in the respective measuring volume for the purpose of exciting luminescence in the multiple confocal volume elements. The May 2009 Office Action argues that this feature is disclosed by the optics 36 disclosed by Hoyt. Applicants respectfully disagree. In the embodiments of FIGS. 3 and 4 of Hoyt, optical element 36 at best focuses a single light beam 31 into a single sample 50. In the embodiments of FIGS. 5 and 6 of Hoyt, the optical element 36 at best focus the emission light 34 emitted out from the sample wells, and does not focus any beams into the sample wells. See Hoyt at paragraphs [0069] and [0070]. Hoyt does not disclose or even suggest any optical element for focusing multiple light beams into multiple confocal volume elements.

Stern does not remedy these deficiencies of Hoyt, and the May 2009 Office Action has not cited any portions of Stern that allegedly disclose or suggest these features.

Claim 7 is patentable over the proposed combination of Hoyt and Stern at least because this combination fails to disclose or suggest focusing optics for focusing penetrating multiple light beams into multiple confocal volume elements as recited in claim 7. Furthermore, claims 8-10, which are dependent from claim 7 and incorporate

all of the limitations recited therein, are also patentable over this combination for at least these reasons, in addition to the novel features that claims 8-10 recite individually. Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. § 103 be withdrawn.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable, by reason of obviousness, over Hoyt and Stern, and further in view of US Pat. No. 6,078,681 to Silver ("Silver"). Applicants respectfully traverse this rejection and submit that claim 10 recites subject matter that would not have been obvious to a person having ordinary skill in the art in light of this combination of references.

As discussed above, the combination of Hoyt and Stern fails to disclose or suggest all of the features recited in claim 7. For example, this combination fails to disclose or suggest focusing optics for focusing penetrating multiple light beams into multiple confocal volume elements as recited in claim 7. Silver fails to cure this deficiency. Claim 10 is dependent on claim 7, and incorporates all of the limitations recited therein, including those not suggested by Hoyt, Stern, or Silver. Therefore claim 10 is patentable over this combination of references for at least this reason, in addition to the novel features recited directly in claim 10. Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. § 103 be withdrawn.

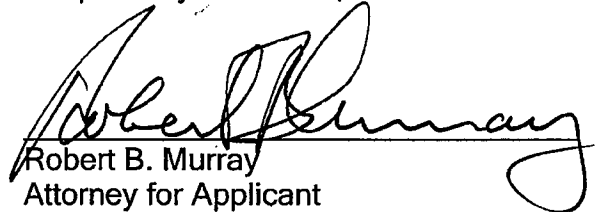
In view of the foregoing, all rejections have been sufficiently addressed. The Applicants submit that the application is now in condition for allowance and request that claims 7-12 be allowed and this application passed to issue.

Commissioner is hereby authorized to charge any additional fees and/or credit any overpayments required under 37 C.F.R. §§ 1.16 and 1.17 to Counsel's Deposit Account No. 02-2135.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "Robert B. Murray", is written over a horizontal line.

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